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In the Supreme Court of the United States

OCTOBER TERM, 1981

IMMIGRATION AND NATURALIZATION SERVICE, APPELLANT

v.

JAGDISH RAI CHADHA, ET AL.

UNITED STATES HOUSE OF REPRESENTATIVES, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

UNITED STATES SENATE, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN NO. 80-1832 AND ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN NOS. 80-2170 AND 80-2171

SUPPLEMENTAL BRIEF FOR THE IMMIGRATION AND NATURALIZATION SERVICE

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Pursuant to Rule 35.5 of the Rules of this Court, the Solicitor General, on behalf of appellant-respondent Immigration and Naturalization Service, files this supplemental brief to inform the Court of the decision of the United

States Court of Appeals for the District of Columbia Circuit in *Consumer Energy Council of America* v. *FERC*, Nos. 80-2184 and 80-2312 (Jan. 29, 1982). In that case, the court of appeals held that the one-House veto provision in Section 202(c) of the Natural Gas Policy Act of 1978, 15 U.S.C. (Supp. IV) 3342(c), is unconstitutional because it violates the Article I requirements of bicameral approval and presentation to the President of measures having the force of law and because it violates the doctrine of separation of powers. The court therefore held that a resolution of disapproval passed by the House of Representatives could not be given effect to invalidate an incremental pricing regulation promulgated by FERC in connection with the deregulation of natural gas.

At page 40, footnote 85 of its opinion, the court of appeals cites the decision of the district court in *Pacific Legal Foundation* v. *Watt*, No. CV-81-141-BLG (D. Mont. Jan. 12, 1982).[1] That case involves a challenge to a Public Land Order withdrawing certain lands in wilderness areas from disposition under laws pertaining to mineral leasing. The Secretary of the Interior issued the Order following the passage of a resolution by the Committee on Interior and Insular Affairs of the United States House of Representatives pursuant to Section 204(e) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(e), which provides that the Secretary shall withdraw lands from disposition when the appropriate committee of the Senate or House of Representatives notifies him that an emergency exists and that extraordinary measures must be taken to preserve values that otherwise would be lost. The

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[1]The district court's initial opinion in *Pacific Legal Foundation* v. *Watt* was rendered on December 16, 1981. The district court issued an amended opinion in the case on January 12, 1982, and entered judgment on January 18, 1982.

district court concluded that if Section 204(e) were interpreted to authorize the committee to dictate the scope and duration of an emergency withdrawal, it would be unconstitutional under the Ninth Circuit's decision in the instant case. However, the district court construed Section 204(e) to permit the Secretary to revoke the order of withdrawal after a reasonable period, following submission of reports to the committees of Congress. The district court believed that this construction avoided the constitutional issue, even though its decision requires the Executive to take affirmative action based upon a resolution adopted by a single congressional committee. Slip op. 37-38. On January 27, 1982, the Secretary filed a motion for clarification and reconsideration of the district court's decision.

For the convenience of the Court, we are lodging with the Clerk of this Court 10 copies of the D.C. Circuit's opinion in *Consumer Energy Council of America* v. *FERC* and the district court's opinion in *Pacific Legal Foundation* v. *Watt*, as amended on January 12, 1982.

Respectfully submitted.

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Solicitor General

FEBRUARY 1982

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